

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

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| <b>Gingee's Sewing Alterations &amp; Laundromat :</b> | : |                |
| <b>-vs-</b>   | : |                |
| <b>Illinois Energy Savings Corp. d/b/a</b>            | : |                |
| <b>U.S. Energy Savings Corp.</b>                      | : | <b>07-0363</b> |
|   | : |                |
| <b>Complaint as to billing/charges in</b>             | : |                |
| <b>Sheridan, Illinois.</b>                            | : |                |

**ORDER**

By the Commission:

On June 11, 2007, Gingee's Sewing Alterations & Laundromat ("Complainant" or "Gingees") filed a verified complaint pursuant to Section 10-108 of the Illinois Public Utilities Act (220 ILCS 5/10-108) ("the Act") against Illinois Energy Savings Corp. d/b/a U. S. Energy Savings Corp. ("Respondent"), alleging that on June 28, 2005, Respondent had solicited it as a customer for gas service, stating that it represented the United States Government and was selling a program that subsidized new and small businesses to offset rising gas cost charges by Nicor. Complainant alleged that it initially signed a new contract with Respondent, but gave notice of cancellation on July 5, 2005, which was within the specified 45 days. Complainant further alleged that Respondent eventually acknowledged that its records showed that the contract had been cancelled on July 5, however Complainant had been charged 60% above Nicor rates for gas, plus a termination fee. Attached to the complaint is the Customer Agreement, Nicor Rider 6, and certain promotional material.

This matter was scheduled for a Prehearing Conference on July 10, 2007 and was scheduled for status sessions on July 24, July 27 and August 27, 2007. Thereafter, pursuant to notice given in accordance with the rules and regulations of the Commission, this matter came on for hearing on October 10, 2007 before a duly authorized Administrative Law Judge ("ALJ") of the Commission at its offices in Chicago, Illinois. Complainant appeared Pro se and presented the testimony of Dale Alderson and Virginia Alderson, Complainant's co-owners. Respondent appeared by counsel and presented the testimony of Mark Rickard, its Sales Agent. At the conclusion of the hearing on October 10, the record was marked "Heard and Taken".

The ALJ issued a Proposed Order in this matter on December 6, 2007. Neither Complainant nor Respondent filed Briefs on Exceptions.

I. Complainant Position

A. Testimony of Dale Alderson

Mr. Alderson testified that he and his wife, Virginia Alderson, are Complainant's co-owners and the gas account is in Complainant's name. He said that he had signed a contract on June 28, 2005 with Respondent for gas service to Complainant after Ms. Alderson had been approached by Respondent's sales representative, Mike Rickard. Mr. Alderson testified that he decided that entering into the contract had been a mistake and first attempted to cancel it on July 16, 2005. Mr. Rickard had explained how Complainant could save money if Respondent replaced Nicor as its supplier, but that was not what occurred. Mr. Rickard told them that Complainant's rate would be locked in at 87.5 cents per therm while Nicor's rates would increase.

Mr. Alderson stated that a spreadsheet prepared and distributed by Respondent, marked Respondent's Exhibit G, contained the dates of service, quantity and therms supplied, amounts billed, number of days in the billing period and average daily consumption. It shows how Respondent's costs, displayed in the column labeled ESG, compared to Nicor's costs, shown in the second-to-last column on the right, from July 2005 to April 24, 2007. He stated that Respondent's bills for the first six months were lower than Nicor's, but beginning on February 23, 2006, they increased considerably. Mr. Alderson said he felt that Respondent had misled them, because he understood from Mr. Rickard that the rate charged would at all times be lower than Nicor's.

Complainant's Group Exhibit 1, a series of Nicor bills, shows that Respondent was Complainant's gas supplier up to April 16, 2007. Respondent's Exhibit F, a letter from Respondent to Complainant dated April 27, 2007, states that the Natural Gas Price Protection Program Agreement between Complainant and Respondent has been canceled. Mr. Alderson testified that there was no language in the Agreement addressing cancellations specifically by commercial enterprises, only a three-day cancellation deadline for residential customers. He noted that the Agreement contained language stating that the term of the Agreement began on the date of the first gas flow under the Agreement, or if the Agreement was unilaterally canceled before the first gas flow, Respondent's anticipated date of gas flow, which could be 15-90 days after signing.

Mr. Alderson also testified that, after filing the formal complaint in this matter, he received a telephone call from someone named Grace in Respondent's legal department. It was his understanding from the conversation with her that if Complainant agreed not to pursue the complaint, Respondent would remove any supply costs and the disconnect fee of \$1,854.57. He agreed and was thereafter under the impression that the matter was being settled. Respondent then issued a statement in June 2007 showing a \$1,556.58 credit, which Respondent now claims is due from Complainant and which Complainant disputes. Mr. Alderson said that Complainant never received any written confirmation of a waiver of the sums discussed and it never received a bill for a disconnection fee.

## B. Testimony of Virginia Alderson

Ms. Alderson testified that Michael Rickard personally informed her at her business that he was from U.S. Energy Savings Corp., which he said assisted new and small businesses with the rising cost of gas. She assumed that U.S. Energy Savings Corp. was a federal government program subsidizing such businesses because of its name. She requested additional promotional materials from Mr. Rickard and was given a Customer Registration form (the first page of Respondent's Exhibit B), which she signed. She said Mr. Rickard told her that the remaining four pages would follow by mail. Ms. Alderson stated that Mr. Rickard also informed her that signing the registration form was the only way she could obtain the additional materials. It was her impression that she had not signed a contract, only a form requesting additional information. Nicor bills displaying Respondent's name began in August 2005.

Ms. Alderson did not recall whether she had read the terms of the first paragraph on page one of Respondent's Exhibit B, but she acknowledged signing her name. The rest of page one was blank at that time. Ms. Alderson also testified that she received a confirmation telephone call from Respondent while Mr. Rickard was still on the premises, because he needed certain data from the office in order to send her the additional information.

Ms. Alderson testified that it was only when she realized that the document she had signed was the contract itself, not just a request for additional information, that she called Respondent to cancel the transaction. She noted the language regarding unilateral cancelation prior to gas flow and thought that provided a valid basis. She said that after notifying Respondent of Complainant's intent to cancel, Complainant was threatened with breach of contract, gas shut-off and probable loss of business. She added that she did not know what per therm rate Complainant was to be charged.

## II. Respondent Position

### Testimony of Michael Rickard

Mr. Rickard testified that when he visited Complainant's premises on June 28, 2005, he stated that he was there on behalf of U.S. Energy Savings and that they are a gas supplier. He stated that he never represented that he was from the U.S. Government. He testified that he dresses in apparel displaying Respondent's logo and carries an identification badge when making sales calls. This was the procedure he followed when contacting Ms. Alderson. He introduces himself to the potential customer, identifies Respondent as his employer and explains that he is checking to see if the prospective customer qualifies for rate protection. He examines their most recent gas bill and asks whether the customer is paying on time, because if there was a large balance owed, customer will not qualify. If they do qualify, it would be for a five-year fixed price on their gas supply.

Mr. Rickard said that he also explains to customers that they will still receive their bills from, and direct all questions and complaints to, Nicor. He then completes the registration form and points out to the customer the five-year fixed price agreement at

87.5 cents per therm. The customer's signature locks in the term and the price. He also explains to customers some of the information contained in the promotional materials, such as the fixed price compared to the variable market price. Mr. Rickard also testified that he did not tell Ms. Alderson that Respondent's rates would definitely be lower than Nicor's. He said that he advises customers not to accept Respondent's service if they believe that gas prices are going to decrease.

Mr. Rickard identified his handwriting on page one of the Agreement (Respondent's Exhibit B) and testified that he filled out the lower half of the registration form before presenting it to Ms. Alderson for her signature. The Fixed Price Reservation Code ("FPRC") in the lower left corner is the last writing placed on the document. He said he used either the term "contract" or "agreement" in describing it to her. He left a copy of the Agreement and the attached pages with Ms. Alderson on June 28, 2005 and it seemed to him that she understood the terms. He explained that the only additional paperwork a customer gets is a letter from Nicor with Respondent's name on it, stating whether or not the customer has been accepted into the program. Mr. Rickard insisted that he never represented to Ms. Alderson that she would have to sign page one of the Agreement in order to obtain additional information about the program. He also stated that he does not always have copies of the promotional materials.

Mr. Rickard sponsored Respondent's Exhibit J, a compact disc containing a conversation initiated by Mr. Rickard with Respondent's home office on which, among other things, Ms. Alderson confirms to the other speaker, "Sarika", that she has entered into the Agreement. "Sarika" is heard confirming to Ms. Alderson that the term of the Agreement is five years at 87.5 cents per therm. Mr. Rickard testified that he had explained the purpose of the call to Ms. Alderson and that she did not have any questions or express any doubts about the transaction. He added that he always instructs the customer to obtain the ID number of the Customer Service Representative, in this matter written down as #3123 on page one of Respondent's Exhibit B.

Mr. Rickard did not know why Respondent permitted Complainant to switch its service back to Nicor prior to expiration of the five-year period.

Respondent stipulates that the \$1,556 represents supply costs and that U.S. Energy never offered to waive those supply costs, only the cancellation fees in terms of the settlement offer. (Tr. at 143) In its Answer Respondent admits only that Petitioner is subject to certain fees for early termination, as fully set forth in the Terms and Conditions governing the parties' agreement.

### III. Commission Analysis and Conclusions

The Commission is not persuaded by Ms. Alderson's testimony that she signed the blank form (Respondent's Exhibit B) because Mr. Rickard told her it was the only way she could obtain additional information about Respondent's program. (Tr. at 75-77, 83-84). Ms. Alderson's statement is contradicted by Mr. Rickard's testimony that he never told her signing a blank form was a requirement to obtain additional information. (Tr. at 116). He said he filled out the lower half of the form, presented it to

Ms. Alderson, and made it clear that it was a registration enrollment form for U.S. Energy Savings Corp. (Tr. at 113-114, 128-129). He also testified that he went over the terms of the contract with Ms. Alderson before she signed it. (Tr. at 116). The Commission finds Mr. Rickard's testimony to be more convincing. We conclude from the record that Ms. Alderson erred in her belief that Respondent's Exhibit B was merely a request for additional information, not an actual contract. Respondent's Exhibit B displays preprinted language at both the top and bottom that spells out the terms to be met to obtain Respondent's gas service. These terms include, among other things, the price, duration and early termination penalties. This document is unmistakably a contract, and the record shows that it was completed in Ms. Alderson's presence before she signed it.

Complainant failed to corroborate its allegation that it was misled by Respondent's claim that the contract price of the gas, 87.5 cents per therm, would always be lower than Nicor's price. (Tr. at 54, 58-59). Complainant is directly contradicted by Mr. Rickard that, not only did he not say that Respondent's price would always be lower than Nicor's, he advises prospective customers to reject Respondent's service if they think the price of natural gas will decline. (Tr. at 115). Moreover, Mr. Rickard provided a detailed description of what he says to customers generally during a solicitation and he never stated that Respondent's gas prices would always be lower than Nicor's. (Tr. at 110-113). Also, Respondent's Exhibit B, headed "Customer Registration", shows 87.5 cents per therm as the fixed price for the five-year term of the contract, but it neither states nor implies that Respondent's price for natural gas would be less than Nicor's at any time during that term.

Respondent's Exhibit G compares what Respondent billed and what Nicor billed for 21 billing periods from July 27, 2005 to April 24, 2007. Respondent's bills are lower for only six of the 21 cycles. As noted above, Respondent did not, in any of its promotional materials, Mr. Rickard's solicitation, or in the contract, assure Complainant of lower costs. The preprinted language on the lower half of Respondent's Exhibit B states "If you choose to purchase natural gas from your local natural gas distributor, the price will vary with market conditions." Market conditions are what Complainant sought to avoid by accepting Respondent's locked-in price and are also what allowed Nicor to charge at a lower rate than Complainant for 15 of 21 billing periods. There is no evidence to suggest that Respondent had any knowledge of what market conditions would be after Ms. Alderson signed the contract.

Moreover, the Commission cannot give credence to Ms. Alderson's allegation that Mr. Rickard represented to her that he was soliciting Complainant's business on behalf of a U.S. Government agency. We note that Ms. Alderson testified that she *believed* that U.S. Energy Savings Corp., because of its name, was a federal program subsidizing businesses. (Tr. at 75) (emphasis added). Mr. Rickard testified that he identified himself as being from U.S. Energy Savings Corp., and that he never said he was from a government agency. (Tr. at 107, 110). Ms. Alderson failed to corroborate her claim. The Commission discerns nothing from Mr. Rickard's testimony regarding the name U.S. Energy Savings Corp. that would lead it to conclude that he attempted to

mislead either Ms. Alderson or Mr. Alderson as to Respondent's actual identity or purpose.

Respondent's Exhibit B states that "The Customer agrees that if the Customer terminates or breaches this Agreement after it has come into effect (whether or not gas supply has commenced), including, for example, by switching suppliers or reverting to supply from another source, such as NICOR, USESC will suffer damages and the Customer agrees to pay all of those damages as liquidated damages..." The contract neither grants Complainant a grace period of 45 days or of any other duration within which it could extricate itself from the contract, nor specifies a time limit within which Respondent would be required to impose a termination fee.

Respondent's Exhibit H shows that Complainant still owes \$1,556.58 on the contract. Mr. Alderson attempted to counter that with Complainant's Exhibit 2, a Nicor bill that correctly shows \$1,556.58 as a credit. However, Nicor is actually deleting \$1,556.58 from Complainant's Nicor account, because this sum reflects charges for gas supplied to Complainant by Respondent only.

The Commission has analyzed the record evidence in this matter and we find that other than the \$1,556.58 gas commodity charge still owed to Respondent, we are unable to make a finding on the additional cancellation charges and fees articulated in the Respondent's agreement. Respondent has failed to provide the Commission with the necessary data to determine the proper calculation for additional early termination fees. The Respondent only referred to its early termination clause in the agreement. Due to this lack of evidentiary support we conclude that Complainant is not liable to Respondent for payment of any early termination fees. Therefore, the Commission concludes that Respondent is properly due and owing from Complainant the amount of \$1,556.58, which represents the gas commodity charges still owed on the account. Complainant shall remit payment for these commodity charges within 30 days of the entry of this Order. However, Respondent shall not bill or demand payment from the Complainant for any other charges or fees in connection with the agreement at issue in this matter. For these reasons the Commission hereby denies the Complaint filed by Complainant and finds this matter properly dismissed.

#### IV. Findings and Ordering Paragraphs

The Commission, having reviewed the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) on June 11, 2007, Gingee's Sewing Alterations & Laundromat filed a complaint against Illinois Energy Savings Corp. d/b/a U. S. Energy Savings Corp., alleging that Respondent solicited Complainant for gas service by misrepresenting itself as an agency of the U.S. Government; by telling Complainant's co-owner she could only obtain additional data about Respondent's program by signing a blank form that proved to be a contract; and by misleading Complainant by stating it would provide gas service at a lower cost than Nicor for the contract term.

- (2) Illinois Energy Savings Corp. d/b/a U. S. Energy Savings Corp., a Delaware corporation authorized to transact business in Illinois, is an alternative gas supplier pursuant to 220 ILCS 5/19-110;
- (3) the Commission has jurisdiction over the parties and the subject matter herein;
- (4) Complainant's evidence fails to establish that Respondent solicited Complainant for gas service by misrepresenting itself as an agency of the U.S. Government;
- (5) Complainant's evidence fails to establish that Respondent told Complainant's co-owner she could only obtain additional data about Respondent's program by signing a blank form that proved to be a contract;
- (6) Complainant's evidence fails to establish Respondent misled Complainant by stating it would provide gas service at a lower cost than Nicor for the contract term;
- (7) The amount of \$1,556.58 is properly due and owing from Complainant to Respondent for gas commodity charges during the pendency of the contract; Complainant shall remit payment to Respondent within 30 days of entry of this Order;
- (8) Respondent shall not bill Complainant for any other charges or fees relative to this matter;
- (9) the complaint should be denied.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the complaint filed by Gingee's Sewing Alterations & Laundromat on June 11, 2007 against Illinois Energy Savings Corp. d/b/a U. S. Energy Savings Corp. be, and is hereby, denied.

IT IS FURTHER ORDERED that \$1556.58 is properly due and owing from Complainant to Respondent for gas commodity charges incurred on Complainant's account. Complainant shall remit said payment to Respondent within 30 days from the entry of this Order.

IT IS FURTHER ORDERED, that Respondent shall not bill Complaint for any other fees or charges relative this matter.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of this Commission this 30<sup>th</sup> day of July, 2008.

(SIGNED) CHARLES E. BOX

Chairman